



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Travis A. Voyles
Acting Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

IN RE: VIRGINIA MOTORS SPECIALISTS INC.

1220 W. Pembroke Ave., Hampton, Virginia

VPDES Permit Registration No. VAR051717

ORDER

This cause came to be heard on November 18, 2022, via conference call, before Presiding Officer Michelle Callahan.

Pursuant to § 10.1-1186 of the Code of Virginia, the Director of the Department of Environmental Quality ("DEQ") has the authority to issue special orders that may include injunctive relief and civil penalties.

I have reviewed the Record, Exhibits, and the Presiding Officer's Recommended Findings of Fact and Conclusions of Law in the above-referenced matter. Accordingly, I adopt those Recommended Findings of Fact and Conclusions of Law and incorporate them into this Order.

Pursuant to my authority under Va. Code § 10.1-1186, I order Virginia Motors Specialists Inc. to comply with (1) the State Water Control Law, Va. Code § 62.1-44.2 et seq., and (2) the General Permit for Stormwater Discharges Associated with Industrial Activities, VPDES Permit Registration No. VAR051717 (the "Permit"), 9 VAC 25-151-70 et seq.

Specifically, I order Virginia Motors Specialists Inc. to complete the following with respect the facility at 1220 W. Pembroke Ave. in Hampton, Virginia:

1. Within 10 days after the end of each quarterly monitoring period for the duration of this Order, submit to DEQ documentation of quarterly visual monitoring, including storm event data, pursuant to Permit Part I(A)(2)(C).
2. By January 10 and July 10, submit benchmark and Chesapeake Bay Total Maximum Daily Load discharge monitoring reports for outfalls 001 and 002 in accordance with Permit Part II(C)(2).
3. Within 60 days from the date of this Order, provide annual training for all employees working in areas where industrial activities or materials are exposed to stormwater and all employees responsible for implementing the SWPPP;
4. Within 60 days from the date of this Order complete an Annual Outfall Evaluation for Unauthorized Discharges, in accordance with Permit Part III(D)(2);
5. Within 60 days from the date of this Order, submit an updated Stormwater Pollution Prevention Plan, containing:
 - a. A complete site map, including all of the elements specified in Permit Part III(B)(2)(b);
 - b. A description of procedures for regular preventative maintenance of control measures, in accordance with Permit Part III(C);

- c. A description of procedures for inspecting vehicles upon arrival at the Facility, in accordance with Permit Part IV(B)(2);
 - d. Information about managing runoff, in accordance with Permit Part IV(B)(4);
 - e. Documentation of employee training required by paragraph 3 above; and
 - f. Documentation of the Annual Outfall Evaluation for Unauthorized Discharges required by paragraph 4 above, including all the information specified in Permit Part III(D)(2).
6. Within 90 days from the date of this Order ensure implementation of all stormwater controls and pollution prevention practices identified in the SWPPP, and submit photographs or other documentation to DEQ demonstrating:
 - a. All existing spills and leaks have been cleaned up,
 - b. Vehicle parts are no longer stored in a manner exposed to stormwater, and
 - c. Vehicles are no longer stored with undrained automotive fluids.
7. Within 30 days from the date of this Order, pay a civil penalty of \$10,000. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The duration of this Order shall be twelve months from the date that it is entered.

Enter this order this 19th day of December, 2022.



Michael S. Rolband
Director, Department of Environmental Quality

VIRGINIA:

IN THE DEPARTMENT OF ENVIRONMENTAL QUALITY

IN RE: VIRGINIA MOTORS SPECIALISTS INC.

1220 W. Pembroke Ave., Hampton, Virginia

VPDES Permit Registration No. VAR051717

RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Preliminary Statement

This case concerns whether Virginia Motors Specialists Inc. (“VMSI”), violated certain provisions of the State Water Control Law, Regulations, and the General Permit for Stormwater Discharges Associated with Industrial Activities, VPDES Permit Registration No. VAR051717 (the “Permit”)¹. The alleged violations occurred at the VMSI facility located at 1220 W. Pembroke Ave. in Hampton, Virginia (the “Facility”). Also at issue in this case is whether injunctive relief and a civil penalty are warranted for the alleged violations.

II. Findings of Fact

VMSI is engaged in industrial activities exposed to stormwater at the Facility, in the form of auto-salvage operations and/or storage of partial dismantled vehicles and salvaged parts, which are subject to the requirements of the Permit.²

VMSI failed to submit discharge monitoring reports (“DMRs”) from October 2015 through July 2019, and for the following monitoring periods: July-December 2019, January-June 2020, July-December 2020, January-June 2021, July-December 2021, and January-June 2022.³

On July 19, 2019, DEQ staff conducted an inspection of the Facility, observing the following:

1. Oil on the pavement and staining on the ground that can discharge with stormwater runoff, indicated that VMSI failed to prevent or minimize the discharge of oil in stormwater discharge;
2. VMSI failed to develop a Stormwater Pollution Prevention Plan (“SWPPP”) for the Facility, and VMSI failed to identify a pollution prevention team, provide a site map, schedule and perform

¹ The Permit is promulgated at 9 VAC 25-151-70 et seq. The “2014 Permit” took effect July 1, 2014 and expired June 30, 2019. The “2019 Permit” took effect July 1, 2019 and expires June 30, 2024.

² On September 22, 2020, VMSI filed a No Exposure Certification and Notice of Termination, asserting that vehicles were no longer being dismantled at the Facility and that VMSI was only using the Facility for storage. Following receipt of these documents, DEQ staff requested access to the Facility to verify whether VMSI had ceased industrial activities, but VMSI denied DEQ access to the Facility and failed to provide records requested by DEQ. However, ongoing operations and activity at the Facility associated with auto-salvage and scrapyard operations were visible from adjacent property owned by the City of Hampton. On August 9, 2021, DEQ sent a letter stating that the No Exposure Certification and Notice of Termination were not acceptable because the ongoing storage of vehicles and salvaged parts constitutes industrial activity requiring Permit coverage. To date, Permit coverage remains in effect for the Facility.

³ DEQ documented these deficiencies in Notices of Violation (“NOVs”) issued September 3, 2019; July 16, 2020; March 23, 2021; September 23, 2021; April 6, 2022; and September 9, 2022.

training, perform and document routine inspections, and conduct an annual evaluation for unauthorized discharges or a comprehensive site compliance evaluation;

3. VMSI failed to perform or document any quarterly visual monitoring or discharge monitoring from October 2015 through July 2019.⁴

On September 16, 2019, VMSI submitted a SWPPP for the Facility.

VMSI denied DEQ access to the Facility for an inspection on March 3, 2021 and failed to provide records requested by DEQ, including the SWPPP, routine facility inspections, employee training, quarterly visual monitoring, and the annual evaluation for unauthorized discharges.⁵

On July 23, 2021, DEQ staff conducted an inspection of the Facility, observing the following:

1. Areas of the Facility were not being kept clean, with spills and leaks, vehicle parts stored in a manner exposed to stormwater, and vehicles stored with undrained automotive fluids, indicating that VMSI was not implementing stormwater controls and pollution prevention practices identified in the SWPPP.
2. VMSI failed to perform or document quarterly visual monitoring for the fourth quarter of 2019; the first, second, and fourth quarters of 2020; and the first and second quarter of 2021. Quarterly visual monitoring reports for the third quarter of 2019 and the second quarter of 2020 did not identify storm even data.
3. VMSI failed to perform discharge monitoring.
4. The site map did not include the size of the property in acres, location of impervious surfaces, directional arrows showing stormwater flow patterns, outline of the drainage area for each outfall, the size of the drainage area of each outfall in acres, longitude and latitude for each outfall and the location of any municipal separate storm sewer system conveyances receiving discharge from the Facility.
5. The SWPPP did not indicate that the individual identified as responsible for good housekeeping and monitoring requirements had received annual training. The SWPPP did not describe how training addressed the proper handling of oil, used mineral spirits, antifreeze, mercury switches, and solvents.
6. The SWPPP did not specify the frequency of routine inspections, and no routine inspections were performed or documented.
7. The SWPPP did not include a description of procedures for regular preventative maintenance of control measures, a description of procedures for inspecting vehicles upon arrival at the Facility, and information about managing runoff from the Facility.
8. The Annual Outfall Evaluation for Unauthorized Discharges did not include documentation of direct observations of outfalls during the evaluation and a description of the results of the evaluation for the presence of unauthorized discharges.⁶

On October 4, 2022, DEQ staff sent VMSI the Notice of Special Order Proceeding alleging the deficiencies listed above. DEQ staff conveyed DEQ Exhibits numbered 1-23 to VMSI on October 4, 2022 and conveyed DEQ Exhibit 24 to VMSI on November 1, 2022.

On November 18, 2022, DEQ held a Special Order Proceeding (the "Proceeding") pursuant to Va. Code §§ 2.2-4019 and 10.1-1186 before Presiding Officer Michelle Callahan. Mr. Phuc Dinh and Mr. David Silverman received notice and participated in the Proceeding on behalf of VMSI, but VMSI was not

⁴ DEQ documented these deficiencies in an NOV issued September 3, 2019.

⁵ See note 2 supra. DEQ documented these deficiencies in an NOV issued March 23, 2021.

⁶ DEQ documented these deficiencies in a NOV issued September 23, 2021.

represented by counsel. Carla Pool, the agency advocate, presented DEQ's case during the Proceeding; Enforcement Specialist Russell Deppe, Water Permit Writer Loan Pham, and Inspector David Taylor provided supporting information. The Presiding Officer entered DEQ's Exhibits numbered 1-25 into the record.⁷

During the Proceeding, the agency advocate presented a civil penalty of \$39,375 for the Facility, calculated using the VPDES Civil Charge/Civil Penalty Worksheet ("Worksheet") in accordance with the DEQ Civil Enforcement Manual Ch. 4, effective December 1, 2016. DEQ evaluated the civil penalty considering the statutory factors set forth in Va. Code § 62.1-44.15(8a). DEQ introduced the Worksheet and Penalty Explanation into the record as Exhibit 23, which is incorporated by reference hereto. The maximum penalty authorized under Va. Code § 10.1-1182 for a Special Order issued pursuant to Va. Code § 10.1-1186 is \$10,000. Therefore, a \$10,000 penalty is recommended.

During the Proceeding, Mr. Dinh and Mr. Silverman requested leniency because they were not familiar with Permit requirements and had no knowledge of how to complete reporting, testing, or other Permit requirements. However, ignorance of Permit requirements is not a valid defense for noncompliance. Because the \$10,000 recommended penalty is significantly less than the \$39,375 calculated pursuant to guidance, no further reduction is warranted.

III. Conclusions of Law

VMSI violated the State Water Control Law, Regulations, and Permit by failing to:

1. Conduct semi-annual benchmark monitoring, in violation of 2014 Permit and 2019 Permit Parts I(A)(1)(b) and I(A)(2)(d)(2).
2. Conduct semi-annual TMDL monitoring, in violation of 2014 Permit Part I(B)(7)(b)(1) and 2019 Permit Part I(B)(8)(a), and 2014 Permit and 2019 Permit Parts I(A)(2)(d)(2)
3. Submit benchmark and TMDL DMRs, in violation of 2014 Permit and 2019 Permit Parts I(A)(5) and II(C)(2).
4. Perform and document quarterly visual monitoring, in violation of 2014 Permit and 2019 Permit Part I(A)(1)(a).
5. Identify storm event data on quarterly visual monitoring forms, in violation of 2019 Permit Part I(A)(2)(C).
6. Prevent or minimize the discharge of oil in stormwater discharges, in violation of 2014 Permit Part I(B)(2).
7. Develop a SWPPP and associated documents including, pollution prevention team identification, site map, training schedule and documentation, routine inspection reports, annual evaluation for unauthorized discharges or a comprehensive site compliance evaluation, in violation of 2014 Permit Part III.
8. Provide the SWPPP and associated documents to DEQ upon request, in violation of 2019 Permit Part II(D).
9. Identify all required information in the site map, in violation of 2019 Permit Part III(B)(2)(b).
10. Implement stormwater controls and pollution prevention practices identified in the SWPPP, keep the site clean and perform good housekeeping measures, and eliminate and minimize exposure of material storage areas to stormwater, in violation of 2019 Permit Parts III and III(B)(4)(b).

⁷ In addition to the exhibits conveyed to VMSI on October 4, 2022 and November 1, 2022, DEQ's Exhibits include the notice letter for the Proceeding and reminder and rescheduling emails.

11. Provide annual training for employees working in areas where industrial activities or materials are exposed to stormwater and employees responsible for implementing the SWPPP, in violation of 2019 Permit Part III(B)(4)(b)(6).
12. Describe in the SWPPP how training addresses the proper handling of oil, used mineral spirits, antifreeze, mercury switches, and solvents, in violation of 2019 Permit Part IV(B)(3).
13. Include in the SWPPP a description of procedures for regular preventative maintenance of control measures, procedures for inspecting vehicles upon arrival at the facility and information about managing runoff, in violation of 2019 Permit Part III(C), IV(B)(2), and IV(B)(4).
14. Include all required information in the Annual Outfall Evaluation for Unauthorized Discharges, in violation of 2019 Permit Part III(D)(2).

IV. Recommended Relief

I recommend the Director issue a Special Order pursuant to Va. Code § 10.1-1186 requiring VMSI to:

1. Within 10 days after the end of each quarterly monitoring period for the duration of the Special Order, submit to DEQ documentation of quarterly visual monitoring, including storm event data pursuant to 2019 Permit Part I(A)(2)(C).
2. By January 10 and July 10, submit benchmark and TMDL DMRs for outfalls 001 and 002 in accordance with 2019 Permit Part II(C)(2).
3. Within 60 days from the date of the Special Order, provide annual training for all employees working in areas where industrial activities or materials are exposed to stormwater and all employees responsible for implementing the SWPPP;
4. Within 60 days from the date of the Special Order complete an Annual Outfall Evaluation for Unauthorized Discharges, in accordance with 2019 Permit Part III(D)(2);
5. Within 60 days from the date of the Special Order, submit an updated SWPPP for the 1220 Facility, containing:
 - a. A complete site map, including all of the elements specified in 2019 Permit Part III(B)(2)(b);
 - b. A description of procedures for regular preventative maintenance of control measures, in accordance with 2019 Permit Part III(C);
 - c. A description of procedures for inspecting vehicles upon arrival at the Facility, in accordance with 2019 Permit Part IV(B)(2);
 - d. Information about managing runoff, in accordance with 2019 Permit Part IV(B)(4);
 - e. Documentation of employee training required by paragraph 3 above; and
 - f. Documentation of the Annual Outfall Evaluation for Unauthorized Discharges required by paragraph 4 above, including all the information specified in 2019 Permit Part III(D)(2).
6. Within 90 days from the date of the Special Order ensure implementation of all stormwater controls and pollution prevention practices identified in the SWPPP, and submit photographs or other documentation to DEQ demonstrating:
 - a. All existing spills and leaks have been cleaned up,
 - b. Vehicle parts are no longer stored in a manner exposed to stormwater, and
 - c. Vehicles are no longer stored with undrained automotive fluids.
7. Within 30 days from the date of the Special Order, pay a civil penalty of \$10,000.

Respectfully submitted,



Michelle Callahan
Presiding Officer